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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Vivian Burns

v.
Plaintiff(s),

International Business
Machines Corporation

Defendant(s).

CASE NO. 2:20-cv-01555 RSM
[to be filled in by Clerk's Office]

COMPLAINT FOR EMPLOYMENT
DISCRIMINATION

Jury Trial: Yes No

I. THE PARTIES TO THIS COMPLAINT

A. Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	<u>Vivian Burns</u>
Street Address	<u>10105 SE 240th St #344</u>
City and County	<u>Kent King</u>
State and Zip Code	<u>Washington 98031</u>
Telephone Number	<u>512 228 8040</u>

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B. Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	<u>International Business Machines Corporation</u>
Job or Title (<i>if known</i>)	
Street Address	<u>1 Orchard Rd</u>
City and County	<u>Armonk Westchester</u>
State and Zip Code	<u>New York 10504</u>
Telephone Number	

Defendant No. 2

Name	
Job or Title (<i>if known</i>)	
Street Address	
City and County	
State and Zip Code	
Telephone Number	

Defendant No. 3

Name	
Job or Title (<i>if known</i>)	
Street Address	
City and County	
State and Zip Code	
Telephone Number	

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Defendant No. 4

Name _____
Job or Title (*if known*) _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____

C. Place of Employment

The address at which I sought employment or was employed by the defendant(s) is:

Name International Business Machines Corporation
Street Address 3355 5 120th Pl
City and County Tukwila
State and Zip Code Washington 98168
Telephone Number 281 714 3440

II. BASIS FOR JURISDICTION

This action is brought for discrimination in employment pursuant to (*check all that apply*):

- Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

- Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)

- Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

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(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

Other federal law (*specify the federal law*):

Relevant state law (*specify, if known*):

Relevant city or county law (*specify, if known*):

III. STATEMENT OF CLAIM

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

(1) I am 55 yrs old, in the ADEA protected age group. I worked in the IBM Cloud Support in Tukwila Washington. Cloud Support was a growing department, not selected for resource action, no staff deductions. I received an \$8,000 (attach)

A. The discriminatory conduct of which I complain in this action includes (*check all that apply*):

- Failure to hire me.
- Termination of my employment.
- Failure to promote me.
- Failure to accommodate my disability.
- Unequal terms and conditions of my employment.
- Retaliation.

Statement of Claim (continued)

salary increase for months April through August 2019. I cashed the salary increase on August 31, 2019. At the time of my discharge I had received a great performance review and I was performing at my job level. I met my employer's legitimate expectations. Cause of action is violation of ADEA.

(2) I am a qualified individual working in IBM Cloud Support, at the time of my termination I was on vacation. I had vacation September 3, 2019 and informed my employer I was being held involuntarily for a mental evaluation by a court order. My manager was called at the end of the court session. My manager's response at the time was, "That doesn't make sense!"

I told the manager the judge ordered that I am held for 15 days.

When the involuntary confinement concluded I check my mail for a paycheck and saw letters from Fidelity and COBRA that I was separated from IBM September 13, 2019.

I had no letter from IBM.

I called the manager and asked, "You separated me?"

He said he talked to Human Resources and IBM Legal and ultimately it was his decision but he has not completed the paperwork. I asked why he didn't give me short term disability. I asked him to reinstate me and he told me to call Human Resources.

I called Human Resources, they opened a ticket.

I ended up in an appeals process.

Statement of Claim (continued)

Appeals recorded my long winded complaint that had issues not related to this lawsuit, as well as the circumstances that pertain to the lawsuit.

Appeals said I would no be reinstated

Reasons given were I am an employee at will.

I argued there are exceptions and if it violates public policy I can't be terminated.

I said it is public policy to obey a court order and this was involuntary confinement so I could not leave.

I was told I violate the business conduct guidelines.

I argued the legal circumstances that had me appearing in court began June 25 2019 and no one said I violated business conduct at anytime from July 25, 2019 to September 3, 2019 when the judge ordered the mental evaluation.

I asked how did I violate Business Conduct Guidelines. The appeals manager Robyn Gantt remained silent.

I told Human Resources in a phone call I should have been on short term disability, not separated. HR informed the manager, the manager forwarded the letter to Robyn Gantt.

Robyn said in email I didn't give advance notice that I needed short term disability.

I told her I didn't have advanced notice, I told the manager as soon as I knew I was being held.

I found out Fidelity, an insurance policy I've paid through payroll, would cover the time off.

Statement of Claim (continued)

Robyn Gantt said the short term disability policy was for current employees.

Within this time IBM payroll notified me they overpaid me and sent a letter that I owed the overpayment.

I got another letter that Payroll was writing off the overpayment and notifying the IRS.

I found out the separation date was moved from September 13, 2019 to September 6, 2019.

I never got an exit letter from IBM to officially separate me.

I told Robyn I was a current employee on September 3, 2019, the day of the court order, September 4, September 5 and September 6. I was current, why can't I have the short term disability; Fidelity said IBM had to submit the claim. Robyn would not budge.

I was told I missed too many days of work but September 3, 2019 was a vacation day. September 4, 2019 I was held for mental evaluation. September 5, 2019 I was held for mental evaluation. September 6, 2019 was a manager approved vacation day. I was held for mental evaluation, it is my new separation date.

I have asked IBM HR to verify September 3, 2019 and September 6, 2019 were manager approved vacation days. I get no response and there is a ticket opened with HR for the request.

HR means Human Resources

Statement of Claim (continued)

I have a history of getting a mental evaluation while working at IBM in 2013. I received short term disability and unpaid leave of absence while IBM reinstated my employment after the involuntary hold, August (2013)

I was separated from IBM in a company wide resource action in 2014. (March)

I moved from Texas to Washington and rehired with IBM April 2015.

I have been in the Tukwila office April 2015 until September 2019.

My manager and no other person in IBM interacted with me while I was held in involuntary confinement and refused to interact with me except to deny me the reinstatement.

I wrote Ginny Rometty IBM former CEO and my correspondence went to Robyn Gant. I wrote Arvind Krishna, IBM current CEO and get no response.

I got the Notice of Right to Sue letter and contacted Human Resources for reinstatement and back pay or a buy out of future years of employment and said if I ask for something illegal or unlawful, disregard as it is not my intent.

Robyn Gant sent me an email stating "IBM is not interested in settlement." (approximate wording but I have the email.)

IBM would not suffer undue hardship accommodating the disability or perceived disability since I have a prior reasonable accommodation in their records.

I've spent the year since the separation, trying to be reinstated.

The people who do not comprehend 19 years of continued employment and performance, may find it easy to close the doors to prevent me from having the enjoyment of employment.

With no cause of separation from my actions, the cause of action arises from the activities of the employees; in discriminating against me as soon as a perceived disability in a growing area of technical support and service was presented to the manager.

I am aware of a 25 yr old white male who repeatedly missed work with claims of being ill. He used all vacation and sick days and continued to be paid during his absence and claim of being ill. Human Resources interacted with him, obtained paperwork and he is still employed.

No one interacted with me - No one asked for paperwork.

No one called my emergency contacts to see why I failed to return to work to pay sick or death benefits.

I know managers that if an employee who is always punctual and at work on work days they would be concerned if the employee failed to return to work.

Two days absence in the middle of two vacation days is not a failure to return to work. Cause of action is Violation of (ADAAA), ADA, as amended.

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Other acts (*specify*): _____

B. It is my best recollection that the alleged discriminatory acts occurred on date(s)

September 4, 2019 and on going

C. I believe that defendant(s) (*check one*):

- is/are still committing these acts against me.
 is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my (*check all that apply and explain*):

- race _____
 color _____
 gender/sex _____
 religion _____
 national origin _____
 age (*year of birth*) _____ *(only when asserting a claim of age discrimination.)*
1965
 disability or perceived disability (*specify disability*)
competency to care for oneself

E. The facts of my case are as follows. Attach additional pages if needed.

I am a qualified individual. I am in a protected age group.
I was terminated while working in IBM Cloud Support. The
department was increasing staff. I was not separated as part of a *(attachment)*

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

Statements of Facts (continued)

resource action. I met my employers legitimate expectations for the job. I was the recipient of a salary increase days before the separation from IBM. I was held by court order involuntarily for a mental evaluation. I contacted my manager at the end of the court session from my cell phone to his work phone.

I informed the manager I was being held 15 days.

September 3rd was a vacation day, the day I was held involuntarily

September 4 and September 5 I could not go to work because I was being evaluated for a mental competency issue.

September 6 was a vacation day. I was in involuntary confinement for a mental evaluation.

IBM told Washington Unemployment I was fired because I did not return to work. Washington Unemployment made a determination to pay unemployment because no Washington Statutes were violated.

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IV. EXHAUSTION OF FEDERAL ADMINISTRATIVE REMEDIES

- A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on (date)

January 2019 and had the interview in March 2020.

- B. The Equal Employment Opportunity Commission (check one):

- has not issued a Notice of Right to Sue letter.
 issued a Notice of Right to Sue letter, which I received on (date)

July 28, 2020

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

- C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct (check one):

- 60 days or more have elapsed.
 less than 60 days have elapsed. (ongoing)

V. RELIEF

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

Actual Damages salary from the loss of enjoyment of employment
I would not still be homeless if IBM had reinstated me.
I suffered harsh temperatures, malnutrition, extreme conditions living in a tent on a Hill in Kent.

Relief (continued)

I have communicated with IBM ad nauseum. Robyn Gaatt has just written me off being firm that I would not get the benefits that are due and part of my compensation package at IBM.

Actual damages \$195,600
Punitive damages \$769,600

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VI. CERTIFICATION AND CLOSING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 10/16/2020
Signature of Plaintiff Vivian Burns, Creator, Life
Printed Name of Plaintiff Vivian Burns, Creator, Life

Date of signing: _____
Signature of Plaintiff _____
Printed Name of Plaintiff _____

Date of signing: _____
Signature of Plaintiff _____
Printed Name of Plaintiff _____